IN THE

# Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-937

J-R DISTRIBUTORS, INC., HOWARD C. FRANK, SAMUEL KRAVITZ, ALBERT THOMAS DUANE, and JAMES MICHAEL TIDYMAN,

*Petitioners*

v.

STATE OF WASHINGTON,

*Respondent*

## RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGON

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Respondent accepts the statement of the petitioners as to the opinion below, jurisdiction, constitutional provisions and statutes involved, and the statement of the case.

## QUESTIONS PRESENTED

1. Does *Miller v. California*, 413 U.S. 15 (1973) overrule *Roth v. United States*, 354 U.S. 476 (1957) and *Mishkin v. New York*, 383 U.S. 402 (1966) holding that a statute prohibiting the sale or display of "obscene" material is not unconstitutionally vague?

2. Should any requirement of *Miller v. California*, 413 U.S. 15 (1973) that an obscenity statute as written or construed "specifically describe" sexual conduct be applied retroactively to criminal prosecutions in which the defendant's conduct, the filing of charges, the trial, and argument of the appeal in the state courts all preceded the opinion of the Supreme Court in *Miller v. California, supra*?

3. Is the authoritative construction given the Washington obscenity statute by the Washington Supreme Court in its opinion below in accord with the requirements of *Miller v. California*, 413 U.S. 15 (1973)?

## POSITION AND ARGUMENT

This memorandum is written on behalf of respondent State of Washington regarding the petitioners Samuel Kravitz, Albert Thomas Duane, and James Michael Tidyman, who seek review of the upholding of their convictions in King County Superior Court, wherein the prosecuting agency of the state is the King County Prosecuting Attorney.

Respondent herein does not oppose a Supreme Court review of the issues presented by the petition.

Respondent feels that such review may be beneficial to law enforcement in the state of Washington since a speedy and final determination of the issues presented may remove possible uncertainties that may exist at the present time.

If certiorari is granted, it will be the position of respondent that the judgment and opinion below should be affirmed in all respects. In this regard, respondent herein is in complete agreement with the arguments and authorities set forth by the Spokane County Prosecuting Attorney in the brief in opposition to petition for writ of certiorari on file herein.

Respectfully submitted,

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